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10
 11 UNITED STATES DISTRICT COURT
 12 CENTRAL DISTRICT OF CALIFORNIA

13 SECURITIES AND EXCHANGE
 14 COMMISSION,

15 Plaintiff,

16 vs.

17 ROBERT C. BUTLER,

18 Defendant.

Case No. **11-03792**
**COMPLAINT FOR VIOLATIONS OF
 THE FEDERAL SECURITIES LAWS**

EV

MEMO

(FFM)

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1 Plaintiff Securities and Exchange Commission (“Commission”) alleges as
2 follows:

3 **JURISDICTION AND VENUE**

4 1. This Court has jurisdiction over this action pursuant to Sections 20(b),
5 20(d)(1) and 22(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C.
6 §§ 77t(b), 77t(d)(1) & 77v(a)], Sections 21(d)(1), 21(d)(3)(A), 21(e) and 27 of the
7 Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §§ 78u(d)(1),
8 78u(d)(3)(A), 78u(e) & 78aa], and Sections 209(d), 209(e)(1) and 214 of the
9 Investment Advisers Act of 1940 (“Advisers Act”) [15 U.S.C. §§ 80b-9(d), 80b-
10 9(e)(1) and 90b-14]. Defendant Robert C. Butler (“Butler”) has, directly or
11 indirectly, made use of the means or instrumentalities of interstate commerce, of
12 the mails, or of the facilities of a national securities exchange in connection with
13 the transactions, acts, practices and courses of business alleged in this Complaint.

14 2. Venue is proper in this district pursuant to Section 22(a) of the
15 Securities Act [15 U.S.C. § 77v(a)], Section 27 of the Exchange Act [15 U.S.C.
16 § 78aa], and Section 214 of the Advisers Act [15 U.S.C. § 80b-14] because certain
17 of the transactions, acts, practices and courses of conduct constituting violations of
18 the federal securities laws occurred within this district, and Butler resides in this
19 district.

20 **SUMMARY**

21 3. This case involves an ongoing fraudulent scheme conducted by Butler,
22 of Bermuda Dunes, California.

23 4. Since January 2009, Butler has raised at least \$3.3 million from
24 investors, targeting senior citizens. Butler falsely promised investors monthly
25 returns of 2 to 10% through investments in his fund. In reality, Butler never earned
26 such exorbitant returns and, in fact, has lost investor funds through short-term
27 options trading and misappropriation of investor funds for personal purposes
28 (including funds taken out at casinos). To conceal his fraud, Butler sent falsified

1 account statements to investors inflating the fund's purported balance and its
2 returns. Despite redemption demands, Butler has failed to repay investors. Instead,
3 he continues to solicit new funds and lull existing investors into believing that
4 repayments are forthcoming.

5 5. Butler, by engaging in the conduct described in this Complaint, has
6 violated, and unless enjoined will continue to violate, the antifraud provisions of
7 the federal securities laws. By this complaint, the Commission seeks emergency
8 relief against Butler, including a temporary restraining order, an asset freeze,
9 accountings, an order expediting discovery, and an order prohibiting the
10 destruction of documents, as well as preliminary and permanent injunctions,
11 disgorgement with prejudgment interest, and civil penalties.

12 DEFENDANT

13 6. **Robert C. Butler**, age 44, resides in Bermuda Dunes, California. He
14 claims to operate "funds" named the Butler Private Investment Fund, BTI Fund,
15 and Hawk Performance Thrust Vector Application. He is not registered with the
16 Commission in any capacity. He is also not registered with the State of California
17 as an investment adviser.

18 THE FRAUDULENT SCHEME

19 **A. Butler's Investment Scheme**

20 7. Since at least January 2009, Butler has been operating a securities
21 trading business out of his home using at least three different business names –
22 Butler Private Investment Fund, BTI Fund, and Hawk Performance Thrust Vector
23 Application.

24 8. Butler has obtained leads from his father-in-law, who lives in the
25 same retirement community as several of the investors.

26 9. Butler typically invites investors to his home to view his trading
27 operations, which consist of a purported proprietary trading program with multiple
28 computer monitors. He touts his education and years of successful trading

1 experience. Butler sometimes shows investors account statements of other
2 investors to demonstrate his purportedly large fund balance and high trading
3 profits.

4 10. Butler represents to investors that their money will be pooled in a
5 fund, that Butler will trade that money through his personal brokerage account
6 (referred to herein as the "Account"), and that investors will share (on a pro rata
7 basis) the trading profits from the Account.

8 11. In exchange for their investments, investors typically receive
9 promissory notes (the "Notes"). The terms of the Notes vary, but they obligate
10 Butler to repay the initial amount invested. Although some of the Notes indicate a
11 guaranteed 8% annual interest rate, Butler orally represents that that is the
12 minimum return and that they can expect as much as 10% monthly returns. Some
13 of the Notes have been demand notes, while others have terms ranging from 30
14 days to 10 years.

15 12. Butler sends investors monthly account statements, often by e-mail,
16 consisting of four separate documents on "Hawk Performance Thrust Vector
17 Application" letterhead: an account summary showing the size and performance of
18 the entire fund as well as the investor's pro rata profit earned; a list of all the trades
19 made that month; a graphic representation of the fund's performance; and a
20 statement of the investor's account activity.

21 13. The monthly account statements show high rates of return, with
22 typical profits of between 2 and 7% per month. The monthly account statements
23 also show an ever-increasing balance for the fund. For example, in August 2010,
24 Butler claimed that the fund was worth \$5.7 million. By March 2011, Butler
25 claimed to have a fund balance of \$8.9 million.

26 14. Since January 2009, Butler has raised at least \$3.3 million. He has
27 received funds from at least 17 investors, mostly senior citizens in and around
28 Indio, California.

1 **B. Butler Is Making Material Misrepresentations To Investors**

2 15. Butler orally promises investors a high rate of return on their
3 investments. Butler's representations vary, but he promises returns ranging
4 between 2% and 10% a month. Butler bolsters his representations by showing to
5 investors the monthly account statements of other investors.

6 16. Butler never earned these exorbitant returns. To the contrary, he
7 continually loses money through his securities trading. Butler's short-term trades
8 and options investments are largely unsuccessful. Butler lost money in 24 of the
9 27 months between January 2009 and March 2011. Between January 1, 2009 and
10 March 31, 2011, Butler's securities trading lost approximately \$1.9 million.

11 17. Butler has concealed his securities trading losses from investors.
12 Butler sends to investors falsified monthly statements that list fake trading
13 profits. For example, the following falsified monthly statements claimed the
14 following fake profits:

- 15 a. August 2010—4.08%;
- 16 b. October 2010—5.32%;
- 17 c. November 2010—7.20%;
- 18 d. December 2011—4.64%;
- 19 e. January 2011—5.45%;
- 20 f. February 2011—2.52%; and
- 21 g. March 2011—.53%.

22 18. Butler's falsified monthly account statements also grossly inflated
23 the fund's balance. For example, in August 2010, the monthly statements
24 represented that the fund was worth \$5.7 million. The Account statement for the
25 same period showed a balance of \$104. By March 2011, the monthly statements
26 represented that the fund had a balance of \$8.9 million. The Account statement
27 for the same period showed a balance of \$22.

28 19. Butler's falsified monthly account statements also misstate the

1 specific trades that he had made in the fund that month.

2 20. Butler is misappropriating investor funds. Between January 1, 2009
3 and March 31, 2011, Butler transferred approximately \$1.6 million of investor
4 funds from his brokerage account to himself (the funds were either taken out as
5 cash or were transferred to his personal bank accounts). At least \$47,000 of this
6 money was taken out from casinos.

7 21. Butler touts his education to investors by claiming that he graduated
8 from the Massachusetts Institute of Technology ("MIT"). Butler neither attended
9 nor graduated from MIT.

10 22. Butler touts his professional experience to investors but fails to
11 disclose that he had filed for bankruptcy protection under Chapter 7 of the
12 Bankruptcy Code in 1998.

13 **C. Butler Has Failed To Repay Investors**

14 23. Several investors have demanded that Butler return their money.
15 Butler has failed to repay them. Instead, he has lulled them by promising
16 repayment and giving explanations for his delay. As recently as April 2011, Butler
17 offered to repay one investor only if he made an additional investment in the same
18 amount.

19 **FIRST CLAIM FOR RELIEF**

20 **Fraud In The Offer Or Sale Of Securities**

21 **Violations of Section 17(a) of the Securities Act**

22 **(Against Defendant Butler)**

23 24. The Commission realleges and incorporates by reference paragraphs 1
24 through 23 above.

25 25. Butler, by engaging in the conduct described above, in the offer or
26 sale of securities by the use of means or instruments of transportation or
27 communication in interstate commerce or by use of the mails, directly or
28 indirectly:

- 1 a. with scienter, employed devices, schemes, or artifices to
2 defraud;
- 3 b. obtained money or property by means of untrue statements of a
4 material fact or by omitting to state a material fact necessary in
5 order to make the statements made, in light of the circumstances
6 under which they were made, not misleading; or
- 7 c. engaged in transactions, practices, or courses of business which
8 operated or would operate as a fraud or deceit upon the
9 purchaser.

10 26. By engaging in the conduct described above, Butler violated, and
11 unless restrained and enjoined will continue to violate, Section 17(a) of the
12 Securities Act [15 U.S.C. § 77q(a)].

13 **SECOND CLAIM FOR RELIEF**

14 **Fraud In Connection With The Purchase Or Sale Of Securities**
15 **Violations of Section 10(b) of the Exchange Act and Rule 10b-5**
16 **(Against Defendant Butler)**

17 27. The Commission realleges and incorporates by reference paragraphs 1
18 through 23 above.

19 28. Butler, by engaging in the conduct described above, directly or
20 indirectly, in connection with the purchase or sale of a security, by the use of
21 means or instrumentalities of interstate commerce, of the mails, or of the facilities
22 of a national securities exchange, with scienter:

- 23 a. employed devices, schemes, or artifices to defraud;
- 24 b. made untrue statements of a material fact or omitted to state a
25 material fact necessary in order to make the statements made, in
26 the light of the circumstances under which they were made, not
27 misleading; or
- 28 c. engaged in acts, practices, or courses of business which

1 through 23 above.

2 35. Butler, by engaging in the conduct described above, while acting as an
3 investment adviser to a pooled investment vehicle, directly or indirectly, by use of
4 the mails or means or instrumentalities of interstate commerce:

- 5 a. Made untrue statements of a material fact or omitted to state a
6 material fact necessary in order to make the statements made, in
7 the light of the circumstances under which there were made, not
8 misleading, to any investor or prospective investor in the
9 pooled investment vehicle; or
- 10 b. Engaged in acts, practices, or courses of business that were
11 fraudulent, deceptive, or manipulative with respect to any
12 investor or prospective investor in the pooled investment
13 vehicle.

14 36. By engaging in the conduct described above, Butler violated, and
15 unless restrained and enjoined will continue to violate, Section 206(4) of the
16 Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R.
17 § 275.206(4)-8].

18 **PRAYER FOR RELIEF**

19 WHEREFORE, the Commission respectfully requests that the Court:

20 **I.**

21 Issue findings of fact and conclusions of law that Butler committed the
22 alleged violations.

23 **II.**

24 Issue judgments, in forms consistent with Fed. R. Civ. P. 65(d), temporarily,
25 preliminarily and permanently enjoining Butler, and his agents, servants,
26 employees, and attorneys, and those persons in active concert or participation with
27 any of them, who receive actual notice of the judgment by personal service or
28 otherwise, and each of them, from violating Section 17(a) of the Securities Act [15

1 U.S.C. § 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. §§ 78j(b)], and
2 Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], and Sections 206(1), 206(2), and
3 206(4) of the Advisers Act [15 U.S.C. §§ 80b-6(1), (2) and (4)] and Rule 206(4)-8
4 thereunder [17 C.F.R. § 275.206(4)-8].

5 **III.**

6 Issue, in a form consistent with Fed. R. Civ. P. 65, a temporary restraining
7 order and a preliminary injunction freezing the assets of Butler, prohibiting him
8 from destroying documents, granting expedited discovery, and requiring
9 accountings from Butler.

10 **IV.**

11 Order Butler to disgorge all ill-gotten gains from his illegal conduct,
12 together with prejudgment interest thereon.

13 **V.**

14 Order Butler to pay civil penalties under Section 20(d) of the Securities Act
15 [15 U.S.C. § 77t(d)], Section 21(d)(3) of the Exchange Act [15 U.S.C.
16 § 78u(d)(3)], and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e).]

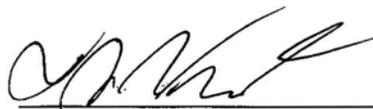
17 **VI.**

18 Retain jurisdiction of this action in accordance with the principles of equity
19 and the Federal Rules of Civil Procedure in order to implement and carry out the
20 terms of all orders and decrees that may be entered, or to entertain any suitable
21 application or motion for additional relief within the jurisdiction of this Court.

22 **VII.**

23 Grant such other and further relief as this Court may determine to be just and
24 necessary.

25
26 DATED: May 3, 2011



27 David J. VanHavermaat
28 Attorney for Plaintiff
Securities and Exchange Commission